

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

CARMEN OTERO Mc CULLOCH,

Plaintiff,

AFFIDAVIT

-against-

07 CV 9780 (LAP)(RLE)

TOWN OF MILAN, TOWN OF MILAN TOWN BOARD,
JOHN V. TALMADGE, Town Supervisor, and **ALFRED**
LO BRUTTO, PAULINE COMBE-CLARK, DIANE
MAY, and **ROSS WILLIAMS,** Councilpersons, **TOWN OF**
MILAN PLANNING BOARD, LAUREN KINGMAN,
Chairman, and Members **JEFFREY ANAGNOS, PETER**
GROSS, SHEILA MARGIOTTA, MARY ANN
HOFFMAN, and **PAULINE COMBE-CLARK, GARY**
E. BECK, Zoning Enforcement Officer, Town of Milan, and
FRANK MARGIOTTA, BARBARA HUGHEY, and
CHARLOTTE NORMAN,

Defendants.

-----X

John Morabito, being duly sworn, deposes and says:

1. I am a planner associated with the firm Morris Associates Engineering Consultants PLLC and in the capacity have served as the planner for the Town of Milan since January 1, 2008. A copy of my resume is annexed hereto as Exhibit "A."
2. I have been asked to review the Town of Milan Comprehensive Plan and the Town of Milan Zoning code to ascertain the following: a) whether there was a consideration during the comprehensive plan process for regional need housing need, and more specifically, multifamily housing and b) whether the current Town of Milan Zoning Law addresses multifamily housing.
3. The Introduction to the Comprehensive Plan points out clearly that there was a conscious effort to reach out to adjacent municipalities in order to look beyond the

boundaries of Milan in the planning process. Page 1.4 of the Comprehensive Plan states, “A regional workshop, conducted in October 2004, was attended by four neighboring towns and representatives of the Dutchess County Planning and Development Department, State Senator Leibell’s office, and the Greenway Council. The participants provided valuable guidance and helped to prioritize the 3 top issues for the Milan Comprehensive Plan.” A copy of the pages of the comprehensive plan referred to herein is annexed hereto as Exhibit “B.”

4. A number of tools for managed growth were formulated and placed in the plan as guidelines for those wishing to develop in the town. The Summary of Section 3 – Course Changes for Milan (page 3.4) – concludes with the idea of balancing the development pressures being felt with the need for keeping housing diversity for a wide range of people in the community. The document states “To balance this, therefore, it is imperative that the Town provide some small lot and multifamily housing that is affordable for people of moderate income. We believe this plan, when implemented, will provide the tools to make these goals possible.”

5. Key to creating the atmosphere for affordable housing in any community is the ability to have central water and wastewater facilities, which helps to allow greater density for housing projects. In the section on Infrastructure (page 6.6), the comprehensive plan discusses the need for infrastructure that will accommodate such central systems and states “The County’s ‘Smart Growth Housing Task Force Report’ of December 2001 recommended that: ‘The County should use funds from the Partnership for Manageable Growth to assist with the financing of water and/or sewer installation for moderately priced homes on small lots, townhouses or multifamily housing.’”

6. Section 7 – Residential Development (page 7-1) – specifically mentions ideas to assist in the area of housing, stating “The CP incorporates tools to expand housing diversity and affordability, particularly for senior citizens, for young families, and for those with moderate incomes who cannot afford large-lot housing. Housing on smaller, more affordable lots and multifamily units are important elements of this effort.”

7. That same section (page 7-7) clarifies how the Town sees the issue of large multifamily developments in relation to the character of the town – “Milan permits two- and multifamily housing across its primary zoning districts. While small multifamily structures are endorsed in this plan as one of our affordable housing solutions, surveys and conversations with Town residents reveal that large multifamily housing (apartment buildings) is not desirable and should not be encouraged. These buildings are inconsistent with the rural character of the Town.” The Town favors smaller multifamily developments with rural scale.

8. Page 7-17 states “Current zoning permits multifamily dwellings, accessory apartments, and mobile homes. These offer affordable housing alternatives and the CPB recommends they remain in the zoning code with amendments where appropriate.”

9. Page 7-18 addresses affordable housing options by stating “Current zoning regulations allow for affordable housing types that are in keeping with the rural residential character of Milan. These include multiple-family homes, accessory apartments and mobile homes.”

10. According to Ross Williams, a current member of the Milan Town Board, further discussion on the regional need for affordable housing was taken up in the fall of 2006 by an *ad hoc* committee that worked with Dutchess County Department of Planning

and Development to understand the scope of the issue. In the fall of 2007, a 23-page report, entitled "Moderately-Priced Housing in Milan," was delivered to the Town Board of Milan with recommendations. The members of that committee attended a combined two weeks of seminars and training on housing alternatives to address what is a serious local, regional and national problem. The report covered a wide range of topics and made several recommendations for possible alternatives and solutions for Milan. One of those recommendations (page 12 of the report) was to "Zone a modest amount of land for multifamily housing, preferably in and around the hamlets." A copy of the report is annexed hereto as Exhibit "C."

11. The Town of Milan Zoning Code, in Section 200-37, addresses Multiple Dwellings and the requirements associated with it. The code addresses such items as building height, density, area, yard and lot coverage provisions, parking, landscaping and buffering and square footage requirements. Table A of the Schedule of Regulations lists four (4) residential zoning districts where multifamily housing is allowed.

12. Consequently, both the comprehensive plan and the Zoning Law do, indeed, consider and address regional housing needs and do not exhibit exclusionary intent.

13. I understand the Ms. Mc Culloch intends to construct single-family residences on large lots. Clearly, her development is not intended to advance affordable housing opportunities and I question how she can credibly assert that the comprehensive plan or Zoning Law are exclusionary in any respect.


John Morabito

Sworn to before me this
12th day of March, 2008



CAROLE ANN CLEARWATER
Notary Public State of New York
Qualified in Dutchess County
Commission Expires February 28, 2011